

State of Wisconsin



1997 Senate Bill 400

Date of enactment: **April 15, 1998**
Date of publication*: **April 29, 1998**

1997 WISCONSIN ACT 111

AN ACT *to repeal* 134.24 (1) (b); *to renumber* 134.24 (title) and (1) (intro.) and (a), 134.24 (1) (c) to (g), 134.24 (3), 134.24 (6) and (7), 134.67 (title), 134.67 (intro.), 134.67 (2) (a) 1. to 3. and 134.67 (2) (b) 1. to 3.; *to renumber and amend* 134.22, 134.24 (2), 134.24 (4), 134.24 (5), 134.42, 134.67 (2) (a) (intro.), 134.67 (2) (b) (intro.), 134.67 (2) (c), 134.68, 134.70, 134.705, 134.74, 134.83 and 134.85; and *to amend* 15.135 (4) (c) 1., 46.03 (37) (intro.), 46.03 (37) (a), 46.03 (37) (b), 60.23 (24), 100.18 (8), 100.26 (1), 134.95 (2), 134.95 (3), 134.99 (1), 165.25 (4) (ar) and 707.55 (10) of the statutes; **relating to**: advisory members of the land and water conservation board and the renumbering of certain provisions of chapter 134 of the statutes (suggested as remedial legislation by the department of agriculture, trade and consumer protection).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of agriculture, trade and consumer protection and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 15.135 (4) (c) 1. of the statutes is amended to read:

15.135 (4) (c) 1. The U.S. secretary of agriculture to appoint a representative of the soil natural resources conservation service and a representative of the agricultural stabilization and conservation farm service agency to serve as advisory members of the board.

NOTE: According to the department of agriculture, trade and consumer protection, the proposed changes to this statute reflect organizational changes at the United States department of agriculture.

SECTION 2. 46.03 (37) (intro.) of the statutes is amended to read:

46.03 (37) FIRST AID INSTRUCTION. (intro.) In connection with first aid and cardiopulmonary resuscitation instruction to fitness center employees required under s. ~~134.705~~ 100.178, do all of the following:

SECTION 3. 46.03 (37) (a) of the statutes is amended to read:

46.03 (37) (a) Promulgate rules establishing standards and procedures under s. ~~134.705~~ 100.178 (5) (a) to (c).

SECTION 4. 46.03 (37) (b) of the statutes is amended to read:

46.03 (37) (b) Approve individuals, organizations or institutions of higher education which teach fitness center employees basic first aid and basic cardiopulmonary resuscitation under s. ~~134.705~~ 100.178 (2).

SECTION 5. 60.23 (24) of the statutes is amended to read:

60.23 (24) CABLE TELEVISION. Enact and enforce an ordinance, and provide forfeitures for a violation of that

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ordinance, that is similar to s. ~~134.42~~ 100.209, or that gives a cable service subscriber greater rights than the rights under s. ~~134.42~~ 100.209 (2).

SECTION 6. 100.18 (8) of the statutes is amended to read:

100.18 (8) Every wholesaler and every other person selling or distributing motor fuel in this state shall keep posted in a conspicuous place, most accessible to the public at his or her place of business, and on every pump from which delivery is made directly into the fuel tank attached to a motor vehicle, a placard showing the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. On pumps or other dispensing equipment from which motor fuel is sold and delivered directly into fuel supply tanks attached to motor vehicles, such posting shall be in figures not less than one inch high, except that no such placard shall be required on a computer pump whereon the total net selling price per gallon including all taxes is legibly shown on its face. Except for sales to drivers of motor vehicles used by physically disabled persons under s. ~~134.85~~ 100.51 (5), all sales shall be made at the posted price. Delivery slips shall also show the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. If the wholesaler or person has more than one place of business in this state, the wholesaler or person shall post that placard at all of his or her places of business. All prices posted shall remain in effect for at least 24 hours after they are posted. It shall be considered deceptive advertising to advertise or represent in any manner the price of motor fuel offered for sale at retail to be less than the price so posted on each pump.

SECTION 7. 100.26 (1) of the statutes is amended to read:

100.26 (1) Any person who violates any provision of this chapter, except s. 100.18 ~~or~~ 100.20, 100.206 or 100.51, for which no specific penalty is prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more than 6 months or both.

SECTION 8. 134.22 of the statutes is renumbered 100.173, and 100.173 (4) (intro.) and (a), as renumbered, are amended to read:

100.173 (4) (intro.) The department of ~~agriculture, trade and consumer protection~~ shall investigate violations of this section. The department of ~~agriculture, trade and consumer protection~~, or any district attorney upon informing the department of ~~agriculture, trade and consumer protection~~, may, on behalf of the state, do any of the following:

(a) Bring an action for temporary or permanent injunctive relief in any court of competent jurisdiction for any violation of this section. The relief sought by the department of ~~agriculture, trade and consumer protection~~ or district attorney may include the payment by a promoter into an escrow account of an amount estimated to be suf-

ficient to pay for ticket refunds. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

SECTION 9. 134.24 (title) and (1) (intro.) and (a) of the statutes are renumbered 100.206 (title) and (1) (intro.) and (a).

SECTION 10. 134.24 (1) (b) of the statutes is repealed.

SECTION 11. 134.24 (1) (c) to (g) of the statutes are renumbered 100.206 (1) (c) to (g).

SECTION 12. 134.24 (2) of the statutes is renumbered 100.206 (2), and 100.206 (2) (a) 1., as renumbered, is amended to read:

100.206 (2) (a) 1. A certified copy of each document that is used at the time of filing by the performing rights society to enter into a contract with a proprietor ~~doing business who operates a retail establishment or restaurant~~ in this state.

SECTION 13. 134.24 (3) of the statutes, as affected by 1997 Wisconsin Act 35, is renumbered 100.206 (3).

SECTION 14. 134.24 (4) of the statutes is renumbered 100.206 (4), and 100.206 (4) (b) 1., as renumbered, is amended to read:

100.206 (4) (b) 1. The proprietor's name and ~~business~~ commercial address and the name and location of each retail establishment and restaurant to which the contract applies.

SECTION 15. 134.24 (5) of the statutes is renumbered 100.206 (5), and 100.206 (5) (a) and (b), as renumbered, are amended to read:

100.206 (5) (a) Enter the ~~business~~ commercial premises of a proprietor to discuss a contract under this section with the proprietor or his or her employees, without identifying himself or herself and making known the purpose of the visit before commencing any further communication with the proprietor or the proprietor's employees.

(b) Engage in any coercive conduct, act or practice that disrupts the ~~business~~ commercial premises of a proprietor in a substantial manner.

SECTION 16. 134.24 (6) and (7) of the statutes are renumbered 100.206 (6) and (7).

SECTION 17. 134.42 of the statutes is renumbered 100.209, and 100.209 (3) and (4) (b), as renumbered, are amended to read:

100.209 (3) RULES AND LOCAL ORDINANCES ALLOWED. This section does not prohibit the department of ~~agriculture, trade and consumer protection~~ from promulgating a rule or from issuing an order consistent with its authority under ~~ch. 100~~ this chapter that gives a subscriber greater rights than the rights under sub. (2) or prohibit a city, village or town from enacting an ordinance that gives a subscriber greater rights than the rights under sub. (2).

(4) (b) The department of ~~agriculture, trade and consumer protection~~ and the district attorneys of this state have concurrent authority to institute civil proceedings under this section.

SECTION 18. 134.67 (title) of the statutes is renumbered 94.709 (title).

SECTION 19. 134.67 (intro.) of the statutes is renumbered 94.709 (1).

SECTION 20. 134.67 (2) (a) (intro.) of the statutes, as affected by 1997 Wisconsin Act 27, is renumbered 94.709 (2) (a) (intro.) and amended to read:

94.709 (2) (a) (intro.) In the event of the outbreak of an epidemic disease of humans or animals spread by insects which it is known can be controlled by DDT but cannot be adequately controlled by any other known pesticide, the department of ~~agriculture, trade and consumer protection~~ may authorize the use of DDT in controlling the epidemic upon a finding that:

SECTION 21. 134.67 (2) (a) 1. to 3. of the statutes are renumbered 94.709 (2) (a) 1. to 3.

SECTION 22. 134.67 (2) (b) (intro.) of the statutes, as affected by 1997 Wisconsin Act 27, is renumbered 94.709 (2) (b) (intro.) and amended to read:

94.709 (2) (b) (intro.) In the event of the outbreak of a plant disease of epidemic proportions which threatens a significant portion of the affected crop and which is caused or spread by an insect which it is known can be controlled by DDT but cannot be adequately controlled by any other known pesticide, the department of ~~agriculture, trade and consumer protection~~ may authorize the use of DDT in controlling the epidemic upon a finding that:

SECTION 23. 134.67 (2) (b) 1. to 3. of the statutes are renumbered 94.709 (2) (b) 1. to 3.

SECTION 24. 134.67 (2) (c) of the statutes, as affected by 1997 Wisconsin Act 27, is renumbered 94.709 (2) (c) and amended to read:

94.709 (2) (c) The department of ~~agriculture, trade and consumer protection~~ also may authorize the use of DDT or its isomers or metabolites for specified research by educational institutions if it finds that no ecologically significant residues of DDT or its isomers or metabolites will be allowed to escape into the environment.

SECTION 25. 134.68 of the statutes is renumbered 100.175, and 100.175 (5) (a) (intro.) and (b) and (7) (a) (intro.), as renumbered, are amended to read:

100.175 (5) (a) (intro.) No person may collect or by contract require a buyer to pay more than \$100 for dating services before the buyer receives or has the opportunity to receive those services unless the person selling dating services establishes proof of financial responsibility by maintaining any of the following commitments approved by the department of ~~agriculture, trade and consumer protection~~ in an amount not less than \$25,000:

(b) The commitment described in par. (a) shall be established in favor of or made payable to the state, for the

benefit of any buyer who does not receive a refund under the contractual provision described in sub. (3). The person selling dating services shall file with the department of ~~agriculture, trade and consumer protection~~ any agreement, instrument or other document necessary to enforce the commitment against the person selling dating services or any relevant 3rd party, or both.

(7) (a) (intro.) The department of ~~agriculture, trade and consumer protection~~ or any district attorney may on behalf of the state:

SECTION 26. 134.70 of the statutes is renumbered 100.177, and 100.177 (13) (b) 1. (intro.), 2. and 3. and (15) (a) and (am), as renumbered, are amended to read:

100.177 (13) (b) 1. (intro.) Except as provided in subd. 3., a center may establish proof of financial responsibility required under par. (a) by maintaining an established escrow account approved by the department of ~~agriculture, trade and consumer protection~~ for all amounts received from buyers in advance of the receipt of services or by maintaining any of the following commitments approved by the department of ~~agriculture, trade and consumer protection~~ in an amount not less than \$25,000, subject to subd. 2.:

2. The commitment described in subd. 1. shall be established in favor of or made payable to the state, for the benefit of any buyer who does not receive a refund under sub. (11) (a). The center shall file with the department of ~~agriculture, trade and consumer protection~~ any agreement, instrument or other document necessary to enforce the commitment against the center or any relevant 3rd party, or both.

3. For 6 or more weight reduction centers owned or operated under the same trade name, the amount of the financial commitment under pars. (a) and (b) for those weight reduction centers is not required to exceed a total of \$150,000. For a weight reduction center that submits to the department of ~~agriculture, trade and consumer protection~~ evidence satisfactory to the department that the weight reduction center collected a total of \$50,000 or more but less than \$100,000 from buyers of its center services in the previous calendar year, the amount of the financial commitment under pars. (a) and (b) is not required to exceed \$10,000. For a weight reduction center that submits to the department evidence satisfactory to the department that the weight reduction center collected less than a total of \$50,000 from buyers of its center services in the previous calendar year, the amount of the financial commitment under pars. (a) and (b) is not required to exceed \$5,000.

(15) (a) The department of ~~agriculture, trade and consumer protection~~ shall investigate violations of this section or s. ~~134.705~~ 100.178 (2) or (4). The department of ~~agriculture, trade and consumer protection~~ may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdic-

tion for any violation of this section or s. ~~134.705~~ 100.178 (2) or (4). The court may in its discretion, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section or s. ~~134.705~~ 100.178 (2) or (4) in an amount not less than \$100 nor more than \$10,000 for each violation.

(am) The department of ~~agriculture, trade and consumer protection~~ may bring an action in circuit court to recover on a financial commitment maintained under sub. (13) against a center or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under sub. (11) (a).

SECTION 27. 134.705 of the statutes is renumbered 100.178, and 100.178 (1) (b) and (c), (4) and (7), as renumbered, are amended to read:

100.178 (1) (b) "~~Department~~" Notwithstanding s. 93.01 (3), "department" means the department of health and family services.

(c) "Fitness center" has the meaning given under s. ~~134.70~~ 100.177 (1) (c).

(4) A fitness center shall post a notice or notices on its premises stating the requirements of sub. (2) and the penalty for a violation of sub. (2) under s. ~~134.70~~ 100.177 (15) (a). The notice shall comply with the rules promulgated by the department under sub. (5) (d).

(7) A violation of sub. (2) or (4) is subject to s. ~~134.70~~ 100.177 (15) (a). This subsection or s. ~~134.70~~ 100.177 (15) (a) does not preclude a person injured as a result of a violation of this section from pursuing any other available equitable or legal relief.

SECTION 28. 134.74 of the statutes is renumbered 100.171, and 100.171 (7) (b) and (8) (intro.), as renumbered, are amended to read:

100.171 (7) (b) Whoever intentionally violates this section may be fined not more than \$10,000 or imprisoned for not more than 2 years or both. A person intentionally violates this section if the violation occurs after the department of ~~agriculture, trade and consumer protection~~ or a district attorney has notified the person by certified mail that the person is in violation of this section.

(8) ENFORCEMENT. (intro.) The department of ~~agriculture, trade and consumer protection~~ shall investigate violations of this section. The department of ~~agriculture, trade and consumer protection~~ or any district attorney may on behalf of the state:

SECTION 29. 134.83 of the statutes is renumbered 100.174, and 100.174 (5) (intro.) and (6), as renumbered, are amended to read:

100.174 (5) (intro.) The department of ~~agriculture, trade and consumer protection~~ or any district attorney may on behalf of the state:

(6) The department of ~~agriculture, trade and consumer protection~~ shall investigate violations of and enforce this section.

SECTION 30. 134.85 of the statutes, as affected by 1997 Wisconsin Act 35, is renumbered 100.51, and 100.51 (2) (b) and (3) (a), as renumbered, are amended to read:

100.51 (2) (b) Good cause exists for refusing to honor a succession if a designated family member does not meet existing reasonable standards of the motor fuel grantor. The motor fuel grantor's existing reasonable standards may include requirements directly related to a person's management and technical skills, training and business commercial experience, credit worthiness and other requirements directly related to a person's ability to operate the motor fuel dealership.

(3) (a) The department of ~~agriculture, trade and consumer protection~~ on behalf of the state or any person who claims injury as a result of a violation of sub. (2) may bring an action for temporary or permanent injunctive relief in any circuit court. It is no defense to an action under this paragraph that an adequate remedy exists at law.

SECTION 31. 134.95 (2) of the statutes is amended to read:

134.95 (2) SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a person for a violation under s. ~~134.22, 134.68, 134.70, 100.171, 100.173, 100.174, 100.175, 100.177, 134.71, 134.72, 134.74, 134.83~~ or 134.87 or ch. 136 or a rule promulgated under these sections or that chapter, the person shall be subject to a supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the defendant, for which the fine or forfeiture was imposed, was perpetrated against an elderly person or disabled person and if any of the factors under s. 100.264 (2) (a), (b) or (c) is present.

SECTION 32. 134.95 (3) of the statutes is amended to read:

134.95 (3) PRIORITY FOR RESTITUTION. If the court orders restitution under s. ~~134.22 (4) (a), 134.68 (7), 134.70 (15), 134.74 (8), 134.83 (7) 100.171 (8), 100.173 (4) (a), 100.174 (7), 100.175 (7), 100.177 (15)~~ or 134.87 (6) for a pecuniary or monetary loss suffered by a person, the court shall require that the restitution be paid by the defendant before the defendant pays any forfeiture imposed under this section.

SECTION 33. 134.99 (1) of the statutes is amended to read:

134.99 (1) Whoever is concerned in the commission of a violation of this chapter, ~~except s. 134.83,~~ for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did

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not directly commit it and although the person who directly committed it has not been convicted of the violation.

SECTION 34. 165.25 (4) (ar) of the statutes is amended to read:

165.25 (4) (ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50, 134.22, 134.42, 134.68, 134.70, 134.74, 134.83 and 134.85 and 100.51 and chs. 136, 344, 704, 707 and 779, together with any other services as are necessarily connected to the legal services.

SECTION 35. 707.55 (10) of the statutes is amended to read:

707.55 (10) GIFTS AND PRIZES. A mail or coupon promotion sent to residents of this state that offers any award, gift or prize for visiting a development or attending any sales presentation shall comply with the requirements of s. ~~134.74~~ 100.171.

NOTE: Chapter 134, stats., relating to miscellaneous trade regulations, contains a number of sections which are specifically assigned to the department of agriculture, trade and consumer protection (DATCP) for administration and enforcement. Other sections of ch. 134 are not assigned to any state agency, which, according to the DATCP, creates some confusion as to the scope of state agency responsibility for ch. 134. The treatment of SECTIONS 2 to 35 is necessary to renumber the laws in ch. 134 that are administered by DATCP to chs. 94 and 100, which DATCP says will help to alleviate this confusion.